

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0687-WQ-E TCEQ ID: RN103997029 CASE NO.: 33341
RESPONDENT NAME: Ashler Oaks, LLC

Page 1 of 2

| | | |
|---|---|---|
| ORDER TYPE: | | |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input checked="" type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Ashler Oaks Apartments, 4100 Parkdale Drive with a collection line adjacent to the intersection of Parkdale Drive and Datapoint Drive, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Apartment complex</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on February 20, 2007, alleging sewage overflow for over a week and also going into an adjacent creek. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed the desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 27, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Lee Wilkins, Registered Agent, Ashler Oaks, LLC, c/o Cantey & Hanger, L.L.P., 1999 Bryan Street, Suite 3330, Dallas, Texas 75201 Mr. Gary Leshgold, Manager, Ashler Oaks, LLC, 15332 Antioch Street, #540, Pacific Palisades, California 90272 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|---|---|
| <p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: February 20, 2007</p> <p>Date of Investigation Relating to this Case: February 20, 2007</p> <p>Date of NOV/NOE Relating to this Case: March 23, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation. One violation was documented.</p> <p>WATER</p> <p>Failed to prevent an unauthorized discharge. Specifically, wastewater was discharging from a broken sewer line at the Site, flowing down the sidewalk and roadway of Datapoint Drive, and entering a tributary of Olmos Creek [TEX. WATER CODE § 26.121(c)].</p> | <p>Total Assessed: \$1,875</p> <p>Total Deferred: \$375 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,500</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Ashler Oaks, by February 26, 2007, had replaced the broken portion of the sewer line and properly disposed of the wastewater.</p> |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

TCEQ

DATES

Assigned

9-Apr-2007

PCW

23-Apr-2007

Screening

23-Apr-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Ashler Oaks, LLC

Reg. Ent. Ref. No. RN103997029

Facility/Site Region 13-San Antonio

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 33341

Docket No. 2007-0687-WQ-E

Media Program(s) Water Quality

Multi-Media

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 1

Order Type 1660

Enf. Coordinator Merrilee Hupp

EC's Team Enforcement Team 1

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$2,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No change due to no previous compliance history.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5 \$625

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The collection line was repaired and the wastewater was transported to an authorized disposal facility on February 26, 2007.

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

Total EB Amounts \$25
Approx. Cost of Compliance \$30,000

SUM OF SUBTOTALS 1-7

Final Subtotal \$1,875

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$1,875

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$1,875

DEFERRAL

20%

Reduction

Adjustment -\$375

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$1,500

Screening Date 23-Apr-2007

Docket No. 2007-0687-WQ-E

PCW

Respondent Ashler Oaks, LLC

Policy Revision 2 (September 2002)

Case ID No. 33341

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103997029

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No change due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 23-Apr-2007

Docket No. 2007-0687-WQ-E

PCW

Respondent Ashler Oaks, LLC

Policy Revision 2 (September 2002)

Case ID No. 33341

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103997029

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(c)

Violation Description

Failed to prevent an unauthorized discharge, as documented during the February 20, 2007 investigation. Specifically, wastewater was discharging from a broken sewer line adjacent to Parkdale Drive in San Antonio, flowing down the sidewalk and roadway of Datapoint Drive, and entering a tributary of Olmos Creek.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | x | |
| Potential | | | |

Percent 25%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

| | | |
|----------------------------|--------------|---|
| mark only one with an x | daily | |
| | monthly | x |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | |

Violation Base Penalty \$2,500

One monthly event is recommended from the February 20, 2007 investigation date until February 26, 2007 (when the discharge was stopped and disposed of properly).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent Ashler Oaks, LLC

Case ID No. 33341

Reg. Ent. Reference No. RN103997029

Media Water Quality

Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|----------|-------------|-------------|-----|------|-----|------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$30,000 | 20-Feb-2007 | 26-Feb-2007 | 0.0 | \$25 | n/a | \$25 |

Notes for DELAYED costs

Cost is approximate for the labor, materials, and disposal associated with the repair of the main sewer line and the pumping and disposal of the wastewater. Date required is the investigation date and final date is when the unauthorized discharges had ceased and been removed and properly disposed of.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$30,000

TOTAL

\$25

Compliance History

| | | | | |
|---|--|------------------------|-----------------|--------------|
| Customer/Respondent/Owner-Operator: | CN602484032 | Ashler Oaks, LLC | Classification: | Rating: |
| Regulated Entity: | RN103997029 | ASHLER OAKS APARTMENTS | Classification: | Site Rating: |
| ID Number(s): | UTILITIES | REGISTRATION | S2116 | |
| Location: | 4100 PARKDALE DR, SAN ANTONIO, BEXAR CO. | | | |
| | Parkdale and Datapoint Drive | | | |
| TCEQ Region: | Region 13- San Antonio | | | |
| Date Compliance History Prepared: | April 26, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | April 26, 2002 to April 26, 2007 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Merrilee Hupp | Phone: | 239-4490 | |

Site Compliance History Components

- | | |
|--|------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | Ashler Oaks, LLC |
| 4. If Yes, who was/were the prior owner(s)? | F.M. Apartments L.L.C. |
| 5. When did the change(s) in ownership occur? | 13-Sep-05 |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ASHLER OAKS, LLC
RN103997029**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0687-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ashler Oaks, LLC ("Ashler Oaks") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Ashler Oaks appear before the Commission and together stipulate that:

1. Ashler Oaks owns and operates an apartment complex at 4100 Parkdale Drive in San Antonio, Bexar County with a collection line adjacent to the intersection of Parkdale Drive and Datapoint Drive in San Antonio, Bexar County, Texas (the "Site").
2. Ashler Oaks has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and Ashler Oaks agree that the Commission has jurisdiction to enter this Agreed Order, and that Ashler Oaks is subject to the Commission's jurisdiction.
4. Ashler Oaks received notice of the violations alleged in Section II ("Allegations") on or about March 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ashler Oaks of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ashler Oaks has paid One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty and Three Hundred Seventy-Five Dollars (\$375) is deferred contingent upon Ashler Oaks's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Ashler Oaks fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Ashler Oaks to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Ashler Oaks have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Ashler Oaks, by February 26, 2007, had replaced the broken portion of the sewer line and properly disposed of the wastewater.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Ashler Oaks has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, Ashler Oaks is alleged to have failed to prevent an unauthorized discharge, in violation of TEX. WATER CODE § 26.121(c), as documented during the February 20, 2007 investigation. Specifically, wastewater was discharging from a broken sewer line at the Site, flowing down the sidewalk and roadway of Datapoint Drive, and entering a tributary of Olmos Creek.

III. DENIALS

Ashler Oaks generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

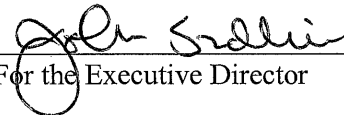
1. It is, therefore, ordered by the TCEQ that Ashler Oaks pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ashler Oaks's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ashler Oaks, LLC, Docket No. 2007-0687-WQ-E " to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Ashler Oaks. Ashler Oaks is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Ashler Oaks in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Ashler Oaks, or three days after the date on which the Commission mails notice of the Order to Ashler Oaks, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director


8/29/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

6/5/07
Date

Gary Leshgold

Name (Printed or typed)
Authorized Representative of
Ashler Oaks, LLC

Manager

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

